

Recording Requested By:)
)
 City Engineer)
)
 When Recorded Mail to:)
 City Clerk)
 City of National City)
 1243 National City Blvd.)
 National City, CA 91950) SPACE ABOVE FOR RECORDER'S USE ONLY

**PRIVATE STORM WATER BEST MANAGEMENT PRACTICES (BMPs)
 MAINTENANCE AGREEMENT**

Assessor's Parcel No. _____

Project No.: _____
 W.O.No.: _____

THIS AGREEMENT for the periodic maintenance and repair of Private Permanent Storm Water Best Management Practices (Private Permanent Storm Water BMPs) (hereinafter referred to as the "BMPs"), is made by and between the City Of National City, a municipality and _____ (hereinafter referred to as the "owner").

WHEREAS, this Agreement is required as a condition of approval by the City of National City Municipal Code Chapter 14.22 and Ordinance No. 2002-2213 for Standard Urban Storm Water Mitigation Plan (SUSMP); and

WHEREAS, "owner" who is the owner of certain real property (the "Property") described on the site map, Exhibit "A", attached hereto, will use and enjoy the benefit of said BMPs incidental to its development; and

WHEREAS, establishment of the BMPs is a condition of developing the property; and

WHEREAS, there exists a benefit to the public when the BMPs are adequately maintained on a regular and periodic basis; and

WHEREAS, it is the desire of the Owner that said BMPs shall be maintained in a safe and usable condition by the Owner; and

WHEREAS, it is the desire of the Owner to conduct the periodic maintenance and repair of said BMPs and owner is responsible for the expense of such maintenance and repair.

WHEREAS, BMPs have been separately described in the Maintenance & Operation (M & O) Plan, Exhibit "B", attached hereto and made a part hereof (hereinafter referred to as the "plan"), consistent with Drawing Number(s) _____, copies of which are on file in the office of the City Engineer.

WHEREAS, it is the intention of the Owner that this Agreement shall constitute a covenant running with the land, and shall be binding upon each successive owner of all or any portion of the property.

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

1. The Owner will submit to the City an annual maintenance report verifying the maintenance and efficient operation of said BMPs.
2. The Owner will maintain operation and maintenance records for at least five (5) years. These records shall be made available to the City for inspection upon request at any time.
3. The Property is benefited by this Agreement, and present and successive owners of all or any portion of the property are now and shall be hereafter expressly bound by the maintenance agreement for the benefit of the land.
4. The cost of maintaining the installed BMPs shall be paid by the owner or the heirs, assigns and successors in interest of each such owner, proportional to their respective interest.
5. In the event any of the herein described parcels of land on the property are further subdivided, the owners, heirs, assigns and successors in interest of each newly created parcel shall be liable under this Agreement for their then pro rata share of expenses and such pro rata shares of expenses shall be computed to reflect their proportionate interest in such newly created parcels.
6. The maintenance to be performed upon the BMPs under this Agreement on the property shall be as set forth in the Plan, Exhibit "B". The Owner shall conduct any repair that is necessary to adequately maintain said BMPs in a functional condition in accordance with their intended purpose. Repairs under this Agreement shall include, but is not limited to, repairing access roadbeds, repairing and maintaining drainage structures, removing debris, and other work reasonably necessary and proper to repair and preserve the BMPs for their intended purposes.

7. If there is a covenant, agreement, or other obligation imposed as a condition of the development on the property, the obligation to repair and maintain the BMPs, as herein set forth shall commence when the improvements have been completed and approved by the City.

8. Any extraordinary repair required to correct damage to said BMPs that results from action taken or contracted for by the owners or their successors in interest shall be paid for by the party taking action or party contracting for work which caused the necessity for the extraordinary repair. The repair shall restore the BMPs to the condition and proper storm water functioning existing prior to said damage.

9. Any liability of the owners for personal injury as a result of or arising out of repairs and maintenance under this Agreement shall be borne by the Owner in proportion to their respective interest in the property. The Owner shall be responsible for maintaining their own insurance. This Agreement is not intended to provide for any sharing or assumption of liability with respect to personal injury or property damage other than that attributable to the repairs and maintenance undertaken under this Agreement.

10. The Owner shall jointly and severally defend, indemnify and hold harmless the City and each of its officials, directors, officers, agents and employees from and against all liability, claims, damages, losses, expenses, personal injury and other costs, including costs of defense and attorney's fees arising out of or in any way related to the use of, repair or maintenance of, or the failure to repair or maintain the BMPs, or its failure to comply with the terms of this Agreement.

11. Nothing in this Agreement, the specifications or other contract documents or the City's review and approval of the plans and specifications or inspection of the work or maintenance related to the BMPs is intended to constitute an acknowledgement of a responsibility or liability for any such matter, and the City and each of its officials, directors, officers, employees and agents, shall have no responsibility or liability in connection with their reviews or approvals.

12. This instrument shall be recorded and the obligation hereby created shall constitute a covenant running with the land, and each subsequent purchaser of all or any portion thereof, by acceptance of delivery of a deed and/or conveyance regardless of form, shall be deemed to have consented to and become bound by this agreement, including without limitation, the right of any person entitled to enforce the terms of this Agreement to institute legal action as provided in Paragraph 8 hereof, such remedy to be cumulative and in addition to other remedies provided in this Agreement and to all other remedies at law or in equity.

13. The terms of this Agreement may be amended in writing upon the request of the Owner of the land described in Exhibit "A" and with the consent of the City Council.

14. This Agreement shall be governed by the laws of the State of California. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby.

15. Should the Developer, the Owner, an Association, or any of their successors, heirs or assigns fail to comply with their repair and maintenance obligation under this Agreement, the City of National City shall have the right, but not the duty, to perform such repair and maintenance, and shall be entitled to recover the full cost of such repair from the party having such repair and maintenance obligation.

IN WITNESS WHEREOF, the parties have executed this Agreement
This _____ day of _____, 20____.

Owner:

(Print name:)

(Print name:)

Signature of OWNER must be notarized. Attach the appropriate acknowledgement.
